

ENTERED

June 07, 2019

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

FRED G. MARTINEZ,

Petitioner,

VS.

LORIE DAVIS-DIRECTOR TDCJ-CID,

Respondent.

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CIVIL NO. 2:18-CV-272

ORDER

The Court is in receipt of Plaintiff Fred G. Martinez's ("Martinez") Declaration of Entry of Default, Dkt. No. 34; the Magistrate Judge's January 17, 2019 Memorandum and Recommendation ("January 17, 2019 M&R"), Dkt. No. 39; Martinez's Objections to the January 17, 2019 M&R, Dkt. No. 44; Defendant Lorie Davis' ("Davis") Motion for Summary Judgment with Brief in Support, Dkt. No. 45; Numerous state court records submitted by Davis, Dkt. Nos. 46, 47, 48 and 49; Martinez's Objection to Summary Judgment, Dkt. No. 51; the Magistrate Judge's March 15, 2019 Memorandum & Recommendation ("March 15, 2019 M&R"), Dkt. No. 54; Martinez's Objections to the March 15, 2019 M&R, Dkt. No. 61; Martinez's Objections to the Magistrate Judge's recommendation to deny a Certificate of Appealability, Dkt. No. 63;¹ Martinez's Leave to Supplement the Record with Newly Discovered Exculpatory Evidence, Dkt. No. 69; and the Magistrate Judge's Order on Pending Motions, Dkt. No. 72.

After independently reviewing the record and applicable law, the Court **ADOPTS** the January 17, 2019 M&R, Dkt. No. 39, and **DENIES** Martinez's motion for entry of default, Dkt. No. 34. The Court **ADOPTS** the March 15, 2019 M&R,

¹ Magistrate Judge Janice Ellington ordered that docket entry number 63, titled Motion for COA, be treated as an objection to the recommendation that a Certificate of Appealability be denied. See Dkt. No. 64.

Dkt. No. 54, and **GRANTS** Davis' motion for summary judgment, Dkt. No. 45.² The Court **DISMISSES** the above-captioned case and **DENIES** Petitioner a Certificate of Appealability.

Final judgment will be entered separately.

SIGNED this 7th day of June 2019.

A handwritten signature in black ink, appearing to read 'Hilda Tagle', written over a horizontal line.

Hilda Tagle
Senior United States District Judge

² The Court declines to adopt the statement of the M&R that reads as follows: “Finally, as to the claim that the state withheld DNA evidence, the state has not in any way impeded Martinez’s ability to raise that claim.” Dkt. No. 54 at 7. The Court instead concludes that there is no evidence that the state impeded Martinez’s ability to raise the claim.